No. 46094-7-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

JOHN J. HADALLER, an individual.

Appellant,

v.

MAYFIELD COVE ESTATES HOMEOWNERS ASSOCIATION, a Washington non-profit corporation; DAVID A. & SHERRY L. LOWE; RANDY FUCHS; CLIFFORD L. & SHEILAH L. SCHLOSSER; and MAURICE L. & CHERYL C. GREER,

Respondent.

RESPONDENT'S BRIEF

APPEAL FROM LEWIS COUNTY SUPERIOR COURT CASE NO. 9-2-934-0, THE HONORABLE JUDGE RICHARD L. BROSEY

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I. INTRODUCTION

Appellant John J. Hadaller ("Hadaller") has a long history of false statements, abusing the judicial process, delay and obfuscation. (Ex. 67, p. 10) Contrary to his representation to this Court, Hadaller has been the litigation instigator—not the victim—in repeated, frivolous lawsuits over the last eight years against Respondent Mayfield Cove Estates Homeowners Association ("the Association"), consisting of his former neighbors and fellow homeowner association members. (CP 354-57) Hadaller has been responsible for five lawsuits and a dozen appellate proceedings leading to this, his last and hopefully final appeal. He has been found "intransigent" (Ex. 67, p. 21) by the trial court, sanctioned multiple times and repeatedly held in contempt of court (Ex. 16, pp. 25-27) (affirmed on appeal), leading the trial court to label his actions "legalized terrorism" (CP 356) and to enjoin him from bringing further lawsuits absent leave of court. Hadaller is a pariah to the neighborhood, homeowner association members and now to the good people of Lewis County and the state who must deal with his continued baseless litigation tactics.

Hadaller's latest appeal is more of the same. Hadaller spends the *majority of his* 50-page *brief regurgitating* his view of the five lawsuits, two bench trials and dozens of motions together with appeals—all of which he lost after full and fair opportunity to present his case. Hadaller engages in

unprofessional name-calling and dilatory actions.[1] Yet virtually all of it is irrelevant.

Hadaller is improperly attempting to reopen and relitigate proceeding pertaining to multiple hearings, trials and appeals that are finally concluded. The June 10, 2011 Findings of Fact and Conclusions of Law and Judgment in this case (CP 322-370) is final and all appellate review was terminated by this Court per the March 14, 2012 mandate entered in Case No. 41818-5-II. Likewise, the December 30, 2009 Findings of Fact and Conclusions of Law and Judgment in Case No. 09-2-52-1 between the Association and Hadaller (Ex. 13) is final and all appellate review was terminated by this Court per the December 11, 2012 mandate entered in Case No. 40426-5-II. Accordingly, the papers filed, trial transcripts and exhibits and oral arguments leading up to the findings, conclusion and judgment in these cases are wholly irrelevant to these proceeding.

Hadaller has failed to establish that the trial court abused its discretion. Accordingly, the Association respectfully urges the Court to

[1] The Association does not dignify Hadaller's repeated baseless *ad hommen* attacks against it and its counsel, other than to state for the record that none of Hadaller's attacks or factual assertions are justified or correct whatsoever. In particular, Hadaller accuses Respondents and their counsel of "fraud" and "unethical" behavior without any factual or legal basis, let alone any understanding of the gravity of the accusations. Hadaller's unsubstantiated accusations go beyond a mere lack of civility to violate CR 11, and should be severely sanctioned.

confirm the trial court's actions, and further to award the Association its attorney's fees and costs on appeal, as provided for by RAP 18.1.[2]

II. STATEMENT OF ISSUES

The **sole** issue on appeal is whether the trial court followed proper procedure or abused its discretion in:

(a) issuing the February 28, 2014 Decree of Foreclosure and Order of Sale;

(b) denying in its December 5, 2014 Order (after the bankruptcy action was resolved) Hadaller's *third* motion for reconsideration of the Decree (the trial court having twice previously denied Hadaller's identical motions for reconsideration); and

(c) ordering an award of supplemental attorney's fees and costs associated with the foreclosure proceeding in favor of the Association on December 19, 2014.

Pertaining to this issue Hadaller assigns the following two errors:

1. The trial court "disregarded the intent and effect of the notice provision in RCW 6.13.080(6) in degradation of Hadaller's homestead rights in two ways. (a) by misreading the statute in finding that the Association properly met the notice provision prior to foreclosure; and (b) by refusing to find Hadaller's homestead rights superior to the Association's CCR lien.

2. The trial court improperly ascribed the award of attorney's fees and costs forming the CCR lien to the Association rather than to other parties.

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[2] The Association further objects to Hadaller's inclusion of materials attached to his brief, ostensible as an "Appendix," in contravention of RAP 10.3(a)(8), as the appended materials were not included in the record on review.

Neither ruling by the trial court was in error; to the contrary, the trial court properly applied the law and facts in issuing the Decree, denying thrice Hadaller's motions for reconsideration and ordering supplemental attorney's fees and costs associated with the foreclosure proceeding. In fact, as explained below, Hadaller is forced to torture the plain language of the statute and ignore the trial court's well-reasoned, final and nonappealable underlying findings, conclusions and judgment to even articulate the two errors.

Hadaller separately urges the Court to reopen *Mayfield Cove Estates Homeowners Association v Hadaller*, Cause No. 09-2-52-1, affirmed on appeal February 28, 2012 in Case No. 404265. This case related, in part, to Hadaller's claimed "Amended Covenants" document. Specifically, Hadaller urges the Court to reverse the findings of fact, conclusions of law and judgment following trial and affirmation on appeal, apparently because he still does not like the outcome of the case. There is no basis under law or equity for this Court to do so.

III. STATEMENT OF THE CASE

In or about 2003, Hadaller created the unincorporated Mayfield Cover Estates Homeowners Association and prepared Declaration of Covenants, Conditions, Restrictions, Road Maintenance Agreement, Water System ("CCR") for the Association Properties. Hadaller recorded these CCRs against **all** Association Properties on or about August 8, 2003 under Auditor's File No. 3174355. (Ex. 4) He specifically established the

Mayfield Cove Estates Homeowners Association at that time. While it was unincorporated until the other Association members incorporated it in September 2008, it was still a legal entity, created by Hadaller, governing the Association Properties. This was confirmed by the trial court (and affirmed on appeal) in Case No. 09-2-52-1, has been affirmed on appeal and is not subject to further appellate review. (Ex. 13, ¶¶ 2, 12-17, 25-28)[3]

With respect to the Association Properties, the CCRs Hadaller prepared and recorded in 2003 specifically included Segregation Survey Lot 3, Assessor's Tax Parcel No. 28767-001-005, (id., pp. 1, 11 & Ex. A) which is the property Hadaller admits he moved onto in January 2005 to establish his homestead. As further confirmed by the Statutory Warranty Deed (Fulfillment) recorded August 20, 2002 under Auditor's File No. 3145909 (Ex. 1), this was property Hadaller owned prior to and at the time he recording the CCRs that he now admits attaches to and runs with the subject Association Property. Hadaller re-recorded the CCRs on April 13, 2007 under Auditor's File No. 3277586. (Ex. 12)

The Association was duly incorporated as a Washington nonprofit association on September 3, 2008, which action was ratified by its members

[3] Hadaller's reliance on *Halme v. Walsh*, 192 Wn. App. 893 (2016) is misplaced. Unlike in *Halme*, Hadaller specifically intended to and in fact created a homeowners association that meets the definition of RCW 64.38.010(11). The CCRs refer specifically to Association Bylaws, provides for membership, assessments for roads, water systems, dockets and other maintenance, voting rights including quorum requirements, Association officers, amendment, annexation and enforcement. The trial court specifically found that the Association that Hadaller created in 2003 was an unincorporated association, with Hadaller as its first secretary and treasurer.

as of December 30, 2008 and confirmed by the Court after trial in Case No. 09-2-52-1, which was later affirmed on appeal. (Ex. 13, ¶¶ 25-28) The Association subsequently amended the CCRs as recorded July 6, 2009 under Auditor's File No. 3329633. (Ex. 17) The amended CCRs were specifically confirmed to be valid and enforceable and to constitute the governing documents of the Association by the Court in Case No. 09-2-52-1 (Ex. 13, Conclusions ¶ 5) and again in the underlying case, both affirmed on appeal. (CP 323-325, 344)

Hadaller commenced a lawsuit against the Association and certain of its members on June 26, 2009 in the present case. Hadaller's claims were almost exclusively directed against the Association, including (1) declaratory judgment that the Association's actions, including those of certain of its officers and members, constitute a breach of the CCRs; (2) that certain actions of the Association were *ultra vires*; (3) to quiet title affecting certain Association easements; and (4) that certain actions of Association members violated the Association CCRs. (CP 287-88) In addition to defending against Hadaller's claims against the Association, the Association also asserted counterclaims against Hadaller based on Hadaller's numerous CCR violations. These violations included failure to set up the community well, failure to pay Association assessments, and willful refusal to abide by Association requirements for garbage and debris removal. (CP 477-490)

Because Hadaller's claims and the Association's counterclaims implicated the Association directly and/or against two or more members on

matters affecting the Association, and/or were on matters pertaining to prosecuting Hadaller's multiple violations of the CCRs, the Association was authorized by statute and its controlling documents and obligated by the unanimous vote of its directors and officers to "institute, defend or intervene" in the litigation. After two long years of litigation, and following seven days of bench trial, the Court entered judgment in this case in favor of the Association, including dismissing with prejudice Hadaller's claims (1) that the Association's actions, including those of certain of its officers and members, constitute a breach of the CCRs; (2) that certain actions of the Association were *ultra vires*; (3) that Association easements were improper; and (4) that certain actions of Association members violated the Association CCRs. The Court further found that, pursuant to its original and amended CCRs, as well as Association powers granted pursuant to RCW 64.38.020, the Association has the authority to collect annual and special assessments and otherwise enforce its CCRs, including for accrual of 12% interest on unpaid balances and levy of penalties, and that Hadaller violated the Association CCRs. Among others things, the Court concluded that Association assessments were not paid in full by Hadaller despite repeated written and verbal reminders, and accordingly entered judgment in favor of the Association in the amount of unpaid assessments, interest and fees. (CP 322-70, 514-17)

The trial court concluded that nine out of the ten claims for which attorney's fees were awarded implicated the Association directly and/or

were against two or more members on matters affecting the Association, its easements and the legal plats defining its limits and common areas:

> Specifically, attorney's fees should be awarded for the following claims: (1) that the actions of the individual Defendants were *ultra vires* (dismissed on summary judgment); (2) that the Association grant of easement to Segregation Lot 2 was *ultra vires*; (3) that the individual Defendants breached the "Amended Covenants" document (dismissed on summary judgment); (4) that that individual Defendants did not have authority to grant of easements across their property to Segregation Lot 2; (5) that the individual Defendants breached the short plats (dismissed on summary judgment); (6) that the Lowes' lacked authority to relinquish easements rights they had across the Schlossers' and the Greers' properties; (7) that Hadaller has an easement along the southern part of Segregation Lots 1 and 2 in favor of Segregation Lot 3; (8) that Randy Fuchs trespassed in the placement of a fence on his own property; (9) violation of the Association CCRs; and (10) fraudulent transfer of the Lowe-Hadaller asset to his girlfriend Deborah Reynolds. (CP 358-59)

The sole individual claim not implicating the Association for which attorney's fees were awarded was relatively minor:

> The vast majority of attorney's fees incurred were directly related to researching, responding to and defending Hadaller's claims against the Association, the Schlossers, the Greers, Randy Fuchs, the Rockwoods and the Lowes related to his claim that the easements granted along the Association roadways or individual's property were unauthorized or that there existed an easement in favor of Segregation Lot 3 along the south of Segregation Lots 1 and 2. (CP 353)

As a matter of law, the trial court held that these claims were "intertwined and inseparable," and the principal judgment, costs and attorney's fees were awarded to the Association. (CP 369)

The Association sought first to recover the judgment against Hadaller via a writ of execution on Hadaller's personal property. The levy occurred November 28, 2012 and the sale of Hadaller's nonexempt personal property occurred January 10, 2013. Hadaller's personal property assets were woefully inadequate to pay the judgment amount due, and Hadaller's personal property assets were exhausted. Accordingly, anticipating foreclosure on Hadaller's real property, the Association provided its RCW 6.13.080(6) notice on December 26, 2012. (CP 411,412; Hadaller Brief. p. 18) The Association commenced its foreclosure action more than a year later on February 18, 2014. (CP 697-707)

The issue of the validity of 2006 "Amended Covenants" documents was fully litigated in not one, but two prior trials and appellate proceedings. Following a two-day trial in *Mayfield Cove Estates Homeowners Association v Hadaller*, Case No. 09-2-52-1, the trial court issued December 30, 2009 Findings of Fact and Conclusions of Law and Judgment specifically holding that the "Amended Covenants" were null and void and unenforceable. (Ex. 13) This ruling was affirmed on appeal in Case No. 40426-5-II and is not subject to further appellate review. When Hadaller improperly raised this issue again in the present case, the trial court dismissed Hadaller's claim on summary judgment (CP 654-696) and reiterated after trial that the "Amended Covenants" were null and void and

unenforceable. (CP 324-25; 514-17) Again, this ruling was affirmed on appeal in Case No. 41818-5-II and is not subject to further appellate review.

IV. AUTHORITY AND ARGUMENT

The decision to issue the Decree of Foreclosure, deny thrice Hadaller's motions for reconsideration and order supplemental attorney's fees and costs associated with the foreclosure proceeding lies within the sound discretion of the trial court—one which the appellate court reviews for an abuse of discretion. *See City of Mount Vernon v. Weston*, 68 Wn. App. 411, 414, 844 P.3d 438 (1992), *review denied*, 121 Wn.2d 1024 (1993). A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. *See State v Markle*, 118 Wn.2d 424, 438, 823 P.2d 1101 (1992); *State v. Quigg*, 72 Wn. App. 828, 835, 866 P.2d 655 (1994). *Holbrook v Weyerhaeuser Co.*, 118 Wn.2d 306, 315, 822 P.2d 271 (1992). A discretionary decision rests on "untenable grounds" or is based on "untenable reasons" if the trial court relies on unsupported facts or applies the wrong legal standard. The trial court's decision is "manifestly unreasonable" if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 582-583, 220 P.3d 191 (2009). A "reasonable difference of opinion" does not amount to abuse of discretion. *Ermine v. City of Spokane*, 143 Wn.2d 636, 650, 23 P.3d 492 (2001); *Magana*, 167 Wn.2d at 583.

Hadaller has failed to prove that the trial court manifestly abused its discretion. To the contrary, the trial court's orders were based on sound application of law and substantial evidence. *Ridgeview Props. v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d1231 (1982); *Keever & Assocs., Inc v. Randall*, 129 Wn. App. 733, 737, 119 P.3d 926 (2005).

A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN APPLICATION OF RCW 6.13.080(6)

1. The trial court property found that the notice provision of RCW 6.13.080(6) was met

First, Hadaller is simply wrong that the trial court "disregarded the intent and effect of the notice provision in RCW 6.13.080(6) in degradation of Hadaller's homestead rights by misreading the statute in finding that the Association properly met the notice provision prior to foreclosure. As correctly concluded by the trial court, the Association met the very clear requirements of the statute.

RCW 6.13.080(6) provides that the homestead exemption is not available against an execution or forced sale:

> On debts secured by a condominium's or homeowner association's lien. In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply. An association has complied with this notice requirement by mailing the notice, by first-class mail, to the address of the owner's lot or unit **The notice required in this subsection shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a**

> **foreclosure.** The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. **Failure to give the notice specified in this subsection affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection**

The relevant sections misunderstood by Hadaller are highlighted above, namely, that the required notice "**shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure.**" In other words, the Association has an obligation to notify a new owner within 30 days OR any other owner prior to initiation of a foreclosure. This is the notice requirement—not, as Hadaller contends, that application of RCW 6.13.080(6) for associations is foreclosed as to any debts prior to the notice. It is only in the situation where an association fails to (1) notify a new owner within 30 days OR (2) any other owner prior to initiation of a foreclosure, that the last highlighted provision is triggered. In such a case, application of RCW 6.13.080(6) "**affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection.**" In other words, if an association commences action without giving the required notice (either a new owner within 30 days OR any other owner prior to initiation of a foreclosure), it can only pursue outside of the homestead protection debts (i.e., assessments that come due, interest, attorney's fees, costs, etc.) that accumulate from the date of the notice.

Here, Hadaller is not a new owner. To the contrary, Hadaller is the creator the governing CCRs, having recorded them in 2003. Moreover, Hadaller admits to receiving the Association's December 26, 2012 notice not later than December 29, 2012—well before the foreclosure action was commenced by the Association more than a year later on February 18, 2014. Thus, the statutory notice was clearly met and the trial court properly concluded that the homestead exemption was not available to Hadaller for the debts to the Association secured by the CCR lien.

As an aside, the statutory purpose of this exception to the homestead exemption when it comes to associations is compelling and likely made just for the present type of case involving Hadaller. Here you have a self-professed "litigious" individual that has spent the last six years suing or otherwise disputing everything his fellow association members have done or tried to do, losing every frivolous legal battle, and in the process forcing the Association—at the expense of its other members—to incur huge attorney's fees and cost debts. In addition, Hadaller had defiantly refused, since new board and Association officers were elected, to pay the annual and special Association assessments, causing further financial strain on the other members. Hadaller lived for free since 2009, refusing to pay for water, road maintenance, community insurance, or other Association benefits, thereby further burdening others. But Hadaller made himself judgment proof by maintaining huge mortgages against his property, making it virtually impossible for typical creditors to ever collect a dime of their judgments once the $125,000 homestead exemption was applied. In such

situations, the Washington lawmakers found it compelling to carve out an exemption from the homestead exemption to allow governing community bodies such as the Association to force Hadaller to pay the debts he has burdened his fellow members with due to his actions. To find otherwise in this situation would only act to reward the very misbehavior the legislatures sought to curb with this statutory provision.

While not assigned as an error, Hadaller appears to further argue that the RCW 6.13.080(6) notice was somehow ineffective because the RCW 6.13.080(6) exception from the homestead exemption is strictly limited to "assessments"—defined by Hadaller not to include attorney's fees, costs or anything else under an association lien. In short, Hadaller seeks to limit application of the RCW 6.13.080(6) exception based on the use of the word "assessment" in one passage of the statute, namely, the passage requiring that the association provide the homeowner with "notice that nonpayment of the association's **assessment** may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply." Hadaller misunderstands the plain language of the statute and his reasoning is flawed.

RCW 6.13.080(6) provides, expressly, that the homestead exemption is not available against an execution or forced sale "[o]n debts secured by a condominium's or homeowner **association's lien**." (emphasis added) Accordingly, there is no question that the RCW 6.13.080(6) exception applies to everything considered part of the Association's lien Hadaller cannot deny—and indeed has admitted—that the Association

CCRs expressly create a continuing lien and personal obligation as to assessments, interest, costs and reasonable attorney's fees, and further grant the Association the right to enforce its lien via the present judicial foreclosure action. Indeed, Article III, Section 3.2 specifically and unequivocally includes not only assessments and interest, but also attorney's fees and costs as part of the lien:

> The annual and special assessments, together with interests, costs and reasonable attorney's fees, shall constitute a continuing lien on the property against which each such assessment, interest, costs and reasonable attorney's fees is applicable. (Ex. 17)

Article V, Section 5.1 confirms that the Association may enforce, "by any proceeding at law or in equity," all "restrictions, conditions, covenants, reservations, assessments, liens, penalties, interest and charges now or hereafter imposed by the provisions of these CCRs." (Id.) The trial court properly ruled, originally and by virtue of denial of Hadaller's multiple motions for reconsideration, that interest, costs and reasonable attorney's fees were secured by and considered part of the Association's lien.

What Hadaller fails to appreciate (or chooses to ignore) is that the passage he now focuses only is limited **only** to the notice required to be given by the association prior to foreclosure. Specifically, the statute requires **only** that the Association provide the homeowner with "notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply." In other words, associations are not required to provide notice

that other amounts that may be secured under the lien as provided by the CCRs—e.g., penalties, interest, attorney's fees or costs—may result in foreclosure: only assessments. Far from limiting the scope of RCW 6.13.080(6) in the manner sought by Hadaller, the language in fact further supports the adequacy of the Association's December 2012 notice in this situation. Hadaller fails to show any abuse of discretion by the trial court.

2. The trial court property found that Hadaller's homestead rights were not superior to the Association's CCR lien

Hadaller argues that there could be no Association lien subject to RCW 6.13.080(6) that could apply to him and that his homestead rights are superior because (1) he moved into his residence (homestead) onto Segregation Survey Lot 3 in January 2005, and the CCRs that he drafted were not recorded until two years later in May 2007; (Hadaller Brief, pp. 7-8) and (2) there was no Association until it was incorporated as a nonprofit entity with the State of Washington on September 3, 2008 ("Hadaller did not 'acquire title' subject to a HOA nor did a legal HOA exist when he established his homestead in 2005"). (Id. pp. 9, 25) Hadaller is being disingenuous with the Court, not to mention factually inaccurate.

In or about 2003, Hadaller created the unincorporated Mayfield Cover Estates Homeowners Association and prepared Declaration of Covenants, Conditions, Restrictions, Road Maintenance Agreement, Water System ("CCR") for the Association Properties. Hadaller recorded these CCRs against **all** Association Properties on or about August 8, 2003 under

Auditor's File No 3174355. He specifically established the Mayfield Cove Estates Homeowners Association at that time. While it was unincorporated until the other Association members incorporated it in September 2008, it was still a legal entity, created by Hadaller, governing the Association Properties. This was confirmed by the trial court (and affirmed on appeal) in Cause No. 09-2-52-1

And with respect to the Association Properties, the CCRs Hadaller prepared and recorded in 2003 specifically included Segregation Survey Lot 3, Assessor's Tax Parcel No. 28767-001-005, which is the property Hadaller admits he moved onto in January 2005 to establish his homestead. As further confirmed by the Statutory Warranty Deed (Fulfillment) recorded August 20, 2002 under Auditor's File No. 3145909, this was property Hadaller owned prior to and at the time he recording the CCRs that he now admits attaches to and runs with the subject Association Property.

While it is true that Hadaller re-recorded the CCRs on April 13, 2007 under Auditor's File No. 3277586, that did not change the fact that both the Association and the CCRs running with the property in question existed and were recorded, respectively, prior to the date Hadaller created his homestead in January 2005. Indeed, the cases Hadaller cites in his brief confirm that the CCRs he recorded in 2003 cannot be displaced or superseded by a subsequent homestead. (Hadaller Brief, pp. 28-29)

The Association was duly incorporated as a Washington nonprofit association on September 3, 2008, which action was ratified by its members as of December 30, 2008 and confirmed by the Court after trial in Cause

No. 09-2-52-1. The Association subsequently amended the CCRs as recorded July 6, 2009 under Auditor's File No. 3329633. The amended CCRs were specifically confirmed to be valid and enforceable and to constitute the governing documents of the Association by the Court in Cause No. 09-2-52-1 and again in the underlying case.

Of all the people in the world that would know about the CCR assessments, the continuing Association lien for failure to pay, and the risk of attorney's fees and costs being including in any action by the Association to enforce the CCR lien, it would be Hadaller—the creator of the Association, drafter and recorder of the CCRs and person at the time responsible for enforcement of the same. The Association agrees with Hadaller on this point: "First in position first in right." Unfortunately for Hadaller, it cannot be credibly disputed that, contrary to his assertions on appeal, he formed the Association and recorded the CCRs he drafted against the property at issue on Segregation Survey Lot 3 in 2003, prior to the January 2005 date he admits he created his homestead. To quote his own words, "[a]quiring title with notice of the covenants [is] the key factor in derogating the constitutionally protected homestead" (Hadaller Brief, p.. 34) Accordingly, there can be no error or abuse of discretion in the trial court's application of RCW 6.13.080(6) in this case.

B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN FORECLOSING ON THE ASSOCIATION'S ENTIRE JUDGMENT

Hadaller argues next that the trial court improperly ascribed the award of attorney's fees and costs forming the CCR lien to the Association

rather than to other parties. But in fact, the trial court definitively and properly addressed that issue on multiple occasions, starting with the findings of fact, conclusions of law and judgment from underlying trial court ruling—which has been affirmed and cannot be collaterally challenged—and ending with not one, not two, but three denials of Hadaller repetitive motions for reconsideration of the trial courts Decree of Foreclosure. Hadaller fails to prove any abuse of discretion.

1. The trial court definitely and properly ascribed the costs and attorney's fees to the Association

It is highly disingenuous of Hadaller to now assert that the lawsuit he instigated was not directed at the Association. Hadaller has focused his litigation efforts on the Association, its officers and its members. Hadaller's claims were almost exclusively directed against the Association, including (1) declaratory judgment that the Association's actions, including those of certain of its officers and members, constitute a breach of the CCRs; (2) that certain actions of the Association were *ultra vires*; (3) to quiet title affecting certain Association easements; and (4) that certain actions of Association members violated the Association CCRs. In addition to defending against Hadaller's claims against the Association, the Association also asserted counterclaims against Hadaller based on Hadaller's numerous CCR violations. These violations included failure to set up the community well, failure to pay Association assessments, and willful refusal to abide by Association requirements for garbage and debris removal.

Contrary to Hadaller's assertion, the Association was a necessary party to the underlying case, and was in fact empowered to represent its officers, directors and members against Hadaller litigation. Because Hadaller's claims and the Association's counterclaims implicated the Association directly and/or against two or more members on matters affecting the Association, and/or were on matters pertaining to prosecuting Hadaller's multiple violations of the CCRs, the Association was authorized by statute and its controlling documents and obligated by the unanimous vote of its directors and officers to "institute, defend or intervene" in the litigation. RCW 64.38.020(4) (association powers include: "[i]nstitute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association . . . "); Amended CCRs ("The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, assessments, liens, penalties, interest and charges now or hereafter imposed by the provisions of these CCRs.") (Ex. 17, 5.1)

After two long years of litigation, and following seven days of bench trial, the trial court entered judgment in this case in favor of the Association, including dismissing with prejudice Hadaller's claims against the Association and its officers, directors and members. The trial court further found that, pursuant to its original and amended CCRs, as well as Association powers granted pursuant to RCW 64.38.020, the Association has the authority to collect annual and special assessments and otherwise

enforce its CCRs, including for accrual of 12% interest on unpaid balances and levy of penalties, and that Hadaller violated the Association CCRs. Among others things, the Court concluded that Association assessments were not paid in full by Hadaller despite repeated written and verbal reminders, and accordingly entered judgment in favor of the Association in the amount of unpaid assessments, interest and fees. (CP 322-70; 514-17)

Hadaller glosses over the fact that the trial court specifically considered and rejected the argument Hadaller is now making on appeal regarding the characterization of the underlying lawsuit and the resulting Association judgment forming the basis of the foreclosed CCR lien. In its Decree of Foreclosure and Order of Sale, the trial court specifically held as follows (emphasis added):

> **RCW 6.13.080(6).** The Court concludes that RCW 6.13.080(6) specifically excludes from the protection of the homestead exemption the Association lien, *including the entirety of the 2011 judgment together with subsequent interest (at the rate of 12% per annum), lien fees, reasonable attorney's fees and costs, and any other fees as provided by statute and the CCRs for purposes of the foreclosure action.* The Court further concludes that proper notice was provided by the Association to Hadaller for purposes of this provision.
>
> **Decree of Foreclosure and Order of Sale (Writ of Execution).** The Association CCR lien is a valid lien upon the land and premises described as Hadaller's property. Hadaller's property should be and is hereby ordered to be sold at foreclosure sale by the Lewis County Sheriff in the manner provided by law, and the proceeds thereof applied to the 2011 judgment, together with subsequent interest (at the rate of 12% per annum), lien fees, reasonable attorney's fees and costs, and any other fees as provided by statute and the CCRs for purposes of the foreclosure action. *The Court*

> *specifically finds that the attorney's fees and costs forming part of the 2011 judgment are in favor of the Association and form a proper part of the lien by the Association pursuant to the CCRs and the foreclosure action* (CP 32-34)

This conclusion was confirmed in the trial court's three denials of reconsideration, (CP 85-86, 103-104, 267-69), the last of which specifically held that:

> [T]he entirety of the 2011 judgment, specifically including attorney's fees and costs forming part of the 2011 judgment, were found to be in favor of the Association and form a proper part of the lien by the Association pursuant to the CCRs and the foreclosure action. (CP 268)

This conclusion merely confirmed the trial court's Findings of Fact and Conclusions of Law, where it held that nine out of the ten claims for which attorney's fees were awarded implicated the Association directly and/or were against two or more members on matters affecting the Association, its easements and the legal plats defining its limits and common areas:

> Specifically, attorney's fees should be awarded for the following claims: (1) that the actions of the individual Defendants were *ultra vires* (dismissed on summary judgment); (2) that the Association grant of easement to Segregation Lot 2 was *ultra vires*; (3) that the individual Defendants breached the "Amended Covenants" document (dismissed on summary judgment); (4) that that individual Defendants did not have authority to grant of easements across their property to Segregation Lot 2; (5) that the individual Defendants breached the short plats (dismissed on summary judgment); (6) that the Lowes' lacked authority to relinquish easements rights they had across the Schlossers' and the Greers' properties; (7) that Hadaller has an easement along the southern part of Segregation Lots 1 and 2 in favor of Segregation Lot 3; (8) that Randy Fuchs trespassed in the

> placement of a fence on his own property; (9) violation of the Association CCRs; and (10) fraudulent transfer of the Lowe-Hadaller asset to his girlfriend Deborah Reynolds. (CP 357-58)

The sole individual claim not implicating the Association for which attorney's fees were awarded was relatively minor:

> The vast majority of attorney's fees incurred were directly related to researching, responding to and defending Hadaller's claims against the Association, the Schlossers, the Greers, Randy Fuchs, the Rockwoods and the Lowes related to his claim that the easements granted along the Association roadways or individual's property were unauthorized or that there existed an easement in favor of Segregation Lot 3 along the south of Segregation Lots 1 and 2. (CP 353)

Exercising its considerable discretion, the trial court held that these claims were "intertwined and inseparable." (CP 369) Accordingly, together with the principal judgment, the entire costs and attorney's fees were awarded to the Association. None of the costs or attorney's fees were awarded to any individual parties. In fact, only the Association incurred costs and attorney's fees in the underlying case.

2. The Association's lien was properly held to include the judgment and attorney's fees awarded to the Association, together with interest and foreclosure fees and costs

Hadaller admits that the Association CCRs expressly create a continuing lien and personal obligation as to assessments, interest, costs and reasonable attorney's fees, and further grant the Association the right to enforce its lien via the present judicial foreclosure action. Indeed, Article III, Section 3.2 specifically and unequivocally includes not only

assessments and interest, but also attorney's fees and costs as part of the lien:

> The annual and special assessments, together with interests, **costs and reasonable attorney's fees**, shall constitute a continuing lien on the property against which each such assessment, interest, **costs and reasonable attorney's fees** is applicable . . . (Ex. 17)

(emphasis added) Article V, Section 5.1 confirms that the Association may enforce, "by any proceeding at law or in equity," all "restrictions, conditions, covenants, reservations, assessments, **liens**, penalties, interest and charges now or hereafter imposed by the provisions of these CCRs." (Id.) (emphasis added)

This lien and personal obligation was effective as of the first date Hadaller recorded the CCRs August 8, 2003 and was triggered by the unpaid special assessment approved by the membership December 30, 2008. The lien and personal obligation has continued unsatisfied by the growing debt Hadaller owes to the Association to the present.

Article V of the CCRs expressly provides for enforcement actions including foreclosure of the lien for unpaid assessments, interest, costs and reasonable attorney's fees, including the judicial foreclosure requested herein, as follows:

> 5.1 **Enforcement**. The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, assessments, liens, penalties, interest and charges now or hereafter imposed by the provisions of these CCRs. Failure by the Association to enforce any part

of the CCRs shall in no event be deemed a waiver of the right to do so thereafter.

5.3 **Effect of Nonperformance**. In addition to other remedies provided for herein, the Association may, in its sole discretion and upon majority vote of the Association Board of Directors or officers, bring an action at law or equity against the Member personally obligated and/or Association Properties. The Member may not waive or otherwise escape liability for the assessments by non-use of the Association Road or Water Systems or abandonment of Association Properties. (Id.)

This provision for the foreclosure of Hadaller's property, as one of the Association Properties, is consistent with the terms of the original CCRs prepared and recorded against the Association Properties by Hadaller in 2003 and again in 2007:

ART III, Sec. 8: The association may bring an action at law against the owner personally obligated to pay the same, ***or foreclose the lien against the property*** . . . .

ART IV, Sec. 1: **Enforcement**. The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, assessments, liens and charges now or hereafter imposed by the provisions of this Declaration Failure by the Association to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(Exs. 4, 12) (emphasis added)

Hadaller attempts yet another argument in passing, namely, that to the extent that attorney's fees were not awarded under RCW 64.38.050 or the CCR (in other words, on RCW 4.84.184 or CR 11 bases), it must be "assumed" that such fee award is not in favor of the Association. Hadaller offers no legal or factual basis for this "assumption." There is no requirement in the HOA laws or the CCRs that the legal basis for an award of attorney's fees be from one of these sources. Rather, the HOA laws and CCRs provide that any fees expended by the Association—regardless of the source or basis, if awarded for success in the case and found reasonable—are included as part of the lien and subject to foreclosure. And in point of fact, the entire monetary judgment awarded in this case was to the Association for unpaid assessments, interest and penalties.

C. THERE IS NO BASIS UNDER RAP 2.5(C) OR ELSEWHERE TO REOPEN THE TRIAL COURT'S AFFIRMED JUDGEMENT REGARDING THE "AMENDED COVENANTS" DOCUMENT

Hadaller accuses not only the Association and its counsel, but also this Court of "abet[ting] fraud" regarding the claimed 2006 "Amended Covenants" document. (Hadaller Brief, p. 45) Hadaller is once again wrong on all fronts.

First, the issue of the validity of 2006 "Amended Covenants" documents was fully litigated in not one, but two prior trials and appellate proceedings. Following a two-day trial in *Mayfield Cove Estates Homeowners Association v. Hadaller*, Case No. 09-2-52-1, the trial court issued December 30, 2009 Findings of Fact and Conclusions of Law and

Judgment specifically holding that the "Amended Covenants" were null and void and unenforceable. (Ex. 13, Findings ¶ 17) Again, this ruling was affirmed on appeal in Case No. 40426-5-II and is not subject to further appellate review. When Hadaller improperly raised this issue again in the present case, the trial court dismissed Hadaller's claim on summary judgment (CP 693-96) and reiterated after trial that the "Amended Covenants" were null and void and unenforceable. (CP 324-25; 514-17) Again, this ruling was affirmed on appeal in Case No. 41818-5-II and is not subject to further appellate review.

Second, and for the record, the trial court gave Hadaller every opportunity to litigate the validity of the 2006 "Amended Covenants" document during trial in Case No. 09-2-52-1. Ultimately, the trial court found all of the other Association members credible and did not believe Hadaller's story. Given that, and Hadaller's failure to properly have purported signatures attested, the trial court concluded, and this Court affirmed, that the "Amended Covenants" document is null and void and unenforceable. (See generally CP 656-57)

There is no basis under law or equity for this Court to reopen and reverse the findings of fact, conclusions of law and judgment following trial and affirmation on appeal—just because Hadaller continues to disagree with the outcome.

D. ATTORNEY'S FEES AND COSTS

For the same reasons the Association was entitled to attorney's fees and costs below, it respectfully requests an award of attorney's fees and costs on appeal in this matter. RAP 18.1: *Carrara, LLC v. Ron & E Enters, Inc*, 137 Wn. App. 822, 827 (2007); *Bushong v Wilsback*, 151 Wn. App. 373, 377 (2009).

V. CONCLUSION

It is finally time for Hadaller's long history of false statements, abusing the judicial process, delay and obfuscation to end. Hadaller cannot reopen and relitigate proceeding pertaining to multiple hearings, trials and appeals that are finally concluded. And Hadaller has failed to establish that the trial court abused its discretion. Accordingly, the Association respectfully urges the Court to confirm the trial court's actions, and further to award the Association its attorney's fees and costs on appeal, as provided for by RAP 18.1.

RESPECTFULLY SUBMITTED this 28th day of June, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2016, a true copy of the foregoing was caused to be served via email, per the parties' agreement, addressed as follows:

John J. Hadallei
jhconst10@gmail.com
(note, physical address unknown)

David A. Lowe